HONOURABLE SMT. JUSTICE T. MEENA KUMARI

&

HONOURABLE JUSTICE P. LAKSHMANA REDDY

WRIT PETITION NO. 8457 OF 2004

Dated 13-09-2005

Between:

M. J. Srinivasa Rao, son of M. Jamer, aged about 60 years, Junior Assistant (Retd.), resident of LIGH.1-29, Udayanagar Colony, Sanjeeva Reddy Nagar PO, Hyderabad.

…….Petitioner.

And:

1. The Government of Andhra Pradesh represented by its Secretary,

HM&FW Department, AP Secretariat, Hyderabad and others. …….Respondents.

ORDER : (Per the Honourable Smt. Justice T.Meena Kumari)

This writ petition has been filed by the writ petitioner herein against the order passed in Review M.A.No.2856 of 2003 in O.A.No.2043 of 2002, dated 16-09-2003 by the A. P. Administrative Tribunal, Hyderabad.

The writ petitioner is the applicant before the tribunal. The parties will be referred to as arrayed in the main O.A. before the Tribunal for the sake of convenience.

Originally, the applicant filed an application before the Administrative Tribunal in O.A.2043 of 2002 section 19 of the Administrative Tribunals Act, 1985 seeking to call for the records relating to the impugned proceedings in Rc.No.72/E3,A/2000 dated 16-01-2002 of the 2nd respondent and set aside the

same holding as illegal, arbitrary and violative of CCA Rules and G.O.No.94 dated 5-3-2001 and consequently to direct the respondents to treat from 1-11-1993 and 31-5-2000 as on duty period and pay his salary and other benefits viz., pensionary benefits with 12% interest. The tribunal after hearing rival contentions and having observed that as the C.C.A rules have not been followed strictly by the 4th respondent before removing the applicant from service and the 1st respondent while passing the impugned proceedings dated 16-01-2002, did not find the lacuna on the part of the 4th respondent therein, disposed of the O.A. setting aside the impugned proceedings in question giving liberty to the respondents to continue enquiry against the applicant from the stage of receipt of the reply to the charge memo, from which stage the enquiry is found to be not in conformity with C.C.A rules. Aggrieved by the same, the respondents 1 to 3 filed a petition in Review M.A. No. 2856 of 2003 under section 22 (3) (f) of the Administrative Tribunals Act, 1985 seeking to modify or review its order dated 31-07-2002 in O.A.No.2043 of 2002. The tribunal after considering the contentions, reviewed the last sentence in para 15 of the order viz., "the official respondents are at liberty to continue the enquiry against the applicant from the stage of receiving the reply to the charge memo, from which stage the enquiry is found to be not in conformity with C.C.A. " as,

" the Official respondents are at liberty to continue the enquiry against the applicant from the stage wherein it was not found to be in conformity with C.C.A. Rules by this Tribunal or by framing charges afresh against the applicant basing on the material already available with them and take necessary further action strictly in accordance with Rules." Aggrieved by the same, the writ petitioner filed the present writ petition.

Heard both sides. We have perused the material available on record.

It is contended by the learned counsel for the applicant that in the review application, no notice has been issued to the applicant and that the review M.A. cannot be entertained as the same is filed after the limitation period i.e., after 245 days and the tribunal has no power to condone the delay in filing the Review M.A. For the said proposition, the learned counsel has relied on a decision of the Full Bench of this Court reported G.NARASIMHA RAO V. REGIONAL JOINT DIRECTOR OF SCHOOL EDUCATION (F.B), () wherein the

Full Bench of this Court has held that the tribunal cannot condone the delay either under section 21 (3) of the Act or 29 (2) of Limitation Act.

It is vehemently opposed by the learned counsel G.Ps for Medical and Health and Services-I that there is no error committed by the tribunal in allowing the application.

In view of the proposition laid down by the Full Bench of this Court (Citation 1 supra) and in view of the facts and circumstances of the case, we have no hesitation to hold that the Tribunal was in error in condoning the delay in filing the review application and thereby, the order impugned herein, is set aside and the original order passed in O.A.No.2043 of 2002 dated 16-09-2003 is restored to file.

Accordingly, the writ petition is allowed. No costs.

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Justice T. MEENA KUMARI

Date: 13th September, 2005

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Justice P. LAKSHMANA REDDY

Dvs/Gurc

HONOURABLE SMT.JUSTICE T.MEENA KUMARI

&

HONOURABLE JUSTICE P.LAKSHMANA REDDY

WRIT PETITION NO. 8457 OF 2004

(Order delivered by the Honourable

Smt. Justice T.Meena Kumari)

Dated 13-09-2005